I, therefore, set aside his finding of fact and held that the respondent agreed, at the time of the divorce, to maintain her children.

The second point I had to consider was whether the Magistrate erred in law in holding that, even if the respondent had agreed, at the time of the divorce, to maintain the children, the Court was not thereby precluded from making a maintenance order against the appellant. In the case of a *khula* divorce, the contract may provide for the release of the husband from his obligation to maintain his children by his wife. A *khula* divorce is a dissolution of marriage by agreement, when the aversion is on the side of the wife and she desires a separation. It is effected by an offer from the wife to compensate the husband, if he releases her from his marital rights, and acceptance by the husband of the offer: see *Mulla's* Mahomedan Law, 14th edition, page 272. If the divorce in the present case had been a *khula* divorce, the respondent would not have been in a position to claim maintenance for her children as she had agreed not to claim it at the time of the divorce. I was unable to see why the position of the appellant, who had divorced his wife by pronouncing one *talak* at her request, should be worse than it would have been, if the divorce had been a *khula* divorce. In the circumstances, I decided that the respondent had precluded herself from claiming maintenance for her children, and that the Magistrate had erred in holding that the Court was not precluded from making a maintenance order against the appellant.

For the above reasons I allowed the appeal and set aside the maintenance order.

*Appeal allowed.*

Solicitors: *Muthu & Co.; Director of Legal Aid.*

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## *Re* LEE PHEE SOO, DECD.

[C. A. (Rose C.J., Tan Ah Tah & Chua JJ.) July 21, 1960]

[Singapore — Civil Appeal No. 2 of 1960]

*Gifts — Transfer of Shares — Transferor resident outside sterling area — Death of transferor before permission was granted under Finance Regulations, 1946, by Controller of Finance or his deputy — Whether gifts complete — Finance Regulations, 1946, regs. 4(2) and 10(1).*

This is an appeal from the decision of Ambrose J. who held that transfers of shares by way of gifts made by the deceased transferor to his sons outside the sterling area, without the permission of the Controller of Finance prior to the deceased's death, were complete as the subsequent approval given by the Controller to the transfers operated retrospectively by virtue of reg. 4(2) of the Finance Regulations, 1946. The facts of the case are set out in the Judgment of Ambrose J. in [1960] M.L.J. 75.

**Held:** (1) the Controller's approvals related to the transfers which were the subject matter of the suit and purported to be a permission, authorisation or consent under reg. 4(2);

(2) the deceased had failed to obtain, or even ask for, the necessary permission of the Controller and he could not therefore be said to have done all that was in his power to perfect the gift;

(3) reg. 4(2) could not be invoked to validate an imperfect gift at the date of the transferor's death. Accordingly the gifts of shares formed part of the residuary estate of the transferor at the time of his death.

Decision of Ambrose J. (reported in [1960] M.L.J. 75) reversed.

*Cases referred to:*—

(1) *Re Rose*, [1949] Ch. 78; [1948] 2 All E.R. 971.

(2) *Re Rose*, [1952] Ch. 499; [1952] 1 All E.R. 1217.

(3) *Re Fry*, [1946] Ch. 312; [1946] 2 All E.R. 106.

CIVIL APPEAL.

*T. W. Ong* for plaintiffs/appellants.

*R. L. Eber* for defendant/respondent.

*Cur. Adv. Vult.*

**Rose C.J.:** This matter turns on the effect to be given to a posthumous application for and grant of permission under regulation 4(2) of the Finance Regulations, 1946, which reads as follows:—

"Any exemption, permission, authorisation or consent, made or granted under these Regulations may be declared to be retrospective to such date as may be specified and thereupon the like consequence shall ensue as if the exemption, permission, authorisation or consent had been made or granted on the day to which it is so declared to be retrospective."

The first of the three questions set out in the special case was:

"Were the gifts of the shares by the intestate to Lee Seng Kee and Lee Seng Chin under and by virtue of the transfers executed by the intestate on the 28th June, 1946, incomplete at the date of death in so far as no approval for the transfers was obtained from the Controller of Finance under the Finance Regulations, 1946, before the date of death of the intestate or before the date of execution of the transfers?"

Regulation 10(1) of the Finance Regulations, 1946, provides as follows:—

"Subject to any exemption which may be granted by order of the Controller or his deputy, no person shall, except with permission granted by the Controller or his deputy, transfer any security, either on his own behalf or on behalf of any other person, unless —

(a) the holder of the security and, if the holder is a nominee, the person for whom he is acting as nominee are resident in the sterling area; and

(b) the transferor has produced to the person to whom the security is to be transferred or to his agent such evidence of the facts aforesaid as may be prescribed by instructions issued by the Controller or his deputy;

and no person shall, except with such permission as aforesaid, acquire any security, either on his own behalf, or on behalf of any other person, unless such evidence as aforesaid has been produced to him or to his agent."

The contention of the appellant is that the intended gifts were incomplete as no permission under the Finance Regulations by the Controller of Finance or his deputy for the transfer of the shares prior to the execution of the transfers by the intestate had been granted, or even applied for by the intestate. And the appellant relies upon the case of *In re Fry.* [3] in which it was held that the intended gift was incomplete and therefore inoperative in that the donor had not done everything required of him

in order to divest himself of the legal and equitable title to the shares in question.

The respondent relies upon Exhibit G, a letter dated the 6th of March, 1959, to his solicitors from the Deputy Controller of Foreign Exchange, which reads as follows:—

"OFFICE OF
Controller of Foreign Exchange,
P.O. Box 52, Singapore.
6th March, 1959.

No. E.C. 10160.

Messrs. Laycock & Ong,
Nunes Building,
Malacca Street,
Singapore, 1.

Sirs,

**Estate of Lee Phee Soo deceased**
**Estate of Lee Eng Jin deceased**

With reference to your letter (N/TWO/GO) of 27th February, I have to say that the Finance Regulations. 1946, were in force at the time the late Lee Phee Soo disposed of 911 shares in Lee Rubber Co. Ltd. by gift to his two sons.

An examination of the Control's files shows that approvals were given for the transfer of the shares as follows:—

(1) 16.9.52 456 Shares to Lee Seng Kee
(2) 11.5.57 455 Shares to Lee Seng Chin

The Solicitors concerned were respectively Messrs. Wee Swee Teow & Co. and Messrs. Braddell Bros.

I have the honour to be,
Sirs,
Your obedient servant,

Sd. (F. S. Overton)
Deputy Controller of Foreign Exchange."

There was some argument before the learned Judge as to whether the Controller's approvals related to the transfers which are the subject matter of the suit, but I see no reason to disagree with the learned Judge's conclusion that the approvals did relate to the relevant transfers and purported to be a permission, authorisation or consent under regulation 4(2) of the Finance Regulations to the transfers made by the intestate on the 28th of June 1946.

That being so, counsel for the respondent relies on the two cases of *In re Rose.*[1] & [2] In both those cases the *ratio decidendi* appears to have been that as between the donor and donee the equitable ownership in the shares passes as soon as the donor has done all that has to be done by him.

The distinction in the present case, to my mind, is that it cannot fairly be said that the intestate has done all that was in his power to perfect the gift. He had admittedly failed to obtain, or even ask for, the necessary permission of the Controller.

This failure might, it seems to me, arise from three causes. First, that the intestate was ignorant of the necessity for any such permission; secondly that, though being aware of the necessity for obtaining permission, he carelessly omitted to take the necessary steps to obtain it; thirdly, that he deliberately refrained from taking the necessary steps to obtain permission, so as to reserve for himself a *locus poenitentiae*; in other words, that he deliberately refrained from perfecting the gift.

Now, from whichever of these causes the intestate's omission to apply for the Controller's permission originated, it would seem that it cannot be said that the intestate had done all that was required of him in order to perfect the gifts. That being so, I consider, as learned counsel for the appellant contends, that regulation 4(2) cannot be invoked to validate a transaction of the kind in question which was admittedly incomplete (within the tests recognised in *Fry's case* [3] and the two *Roses' cases*) at the date of the death of the intestate.

For these reasons I am of opinion that the answer to the first question in the special case should have been in the affirmative; the answer to the second question should have been in the negative; and the answer to the third question should have been in the affirmative.

The appeal therefore must be allowed and the judgment of the Court below set aside, and the three questions posed in the Special Case answered as above.

**Tan Ah Tah J.:** I agree.

**Chua J.:** I agree.

[After argument, the following order was made as to costs:—

The costs of the proceedings of both parties both here and below will be taxed on the higher scale as between solicitor and client and paid out of the estate of the intestate.]

*Appeal allowed.*

Solicitors: *Laycock & Ong; Eber & Tan.*

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## THYE LAM & CO. v. THE EASTERN SHIPPING CORPN. LTD.

[O. C. J. (Rigby J.) August 24, 1959]

[Penang — Civil Suit No. 235 of 1957]

*Carriage of Goods by Sea — Admission of liability by agent — Repudiation by principals — Estoppel — Plea of limitation under Article III rule 6 of Hague Rules.*

*Practice — Determination of preliminary point of law before trial — R.S.C. 1957 O.25 r.2.*

*Limitation under Hague Rules — Threat of legal proceedings — Failure to enforce — Protection of right of action.*

The plaintiffs claimed against the defendants for damages for breach of contract and/or duty in and about the carriage of goods by sea. Under the terms of a bill of lading dated December 25, 1955, the defendants received on board their vessel "State of Madras" at Madras, 1,500 bags of rice for delivery to the plaintiffs at Penang. The plaintiffs claimed that there was a short delivery of 283 bags. The bill of lading expressly provided that it was made subject to the Indian Carriage of Goods by Sea Act, 1925, and the schedule thereto, which incorporates the Hague Rules which provide in Article III rule 6 that: "In any event the carrier and the ship shall be discharged from all liability in respect